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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,012	02/10/2006	Peter Neugebauer	032301440	7386
25461 7590 07/10/2009 SMITH, GAMBRELL & RUSSELL SUITE 3100, PROMENADE II 1230 PEACHTREE STREET, N.E. ATLANTA, GA 30309-3592			EXAMINER CORNO JR, JAMES A	
			ART UNIT 1793	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed June 25, 2009, have been fully considered, but they are not persuasive.

Regarding applicant's argument of unexpected results, a showing of improved performance of is not sufficient to demonstrate unexpected results when the benefits of a particular improvement were known in the art at the time of the invention. Applicant's attention is again directed to Hasenzahl et al. (WO 03/037379 A1), which teaches that typical loose pyrogenic silica adsorbates have insufficient flowability (p. 3, lines 22-33) and that precipitated silica typically has an unacceptably high water content (p. 4, lines 2-8). Therefore, the results cannot be considered unexpected, as the advantages of granules of pyrogenic silica over precipitated silica and dispersed pyrogenic silica were known in the art at the time of the invention.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, Deller teaches that pyrogenically prepared silica granules can be

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used as adsorption media, and thus its use as a carrier by adsorbing various foodstuff additives on its surface would have been obvious to one of ordinary skill in the art.

The final rejection is therefore maintained.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES CORNO whose telephone number is (571)270-5829. The examiner can normally be reached on Monday-Thursday 9:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Melvin Curtis Mayes can be reached on 571-272-1234. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JAMES CORNO/  
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